MASTER COPY

PACE UNIVERSITY SCHOOL OF LAW

PROPERTY
DEAN HUMBACH
FINAL EXAMINATION

DECEMBER 19, 1983
TIME LIMIT: 4 HOURS
VERSION A

IN TAKING THIS EXAMINATION, YOU ARE REQUIRED TO COMPLY WITH THE SCHOOL OF LAW RULES AND PROCEDURES FOR FINAL EXAMINATIONS. YOU ARE REMINDED TO PLACE YOUR EXAMINATION NUMBER ON EACH EXAMINATION BOOK AND SIGN OUT WITH THE PROCTOR SUBMITTING TO HIM OR HER YOUR EXAMINATION BOOK(S) AND THE QUESTIONS AT THE CONCLUSION OF THE EXAMINATION.

DO NOT UNDER ANY CIRCUMSTANCES REVEAL YOUR IDENTITY ON YOUR EXAMINATION PAPERS OTHER THAN BY YOUR EXAMINATION NUMBER. ACTIONS BY A STUDENT TO DEFEAT THE ANONYMITY POLICY IS A MATTER OF ACADEMIC DISHONESTY.

GENERAL INSTRUCTIONS:

This examination consists of 60 multiple choice questions. The multiple choice questions are to be answered on the answer sheet provided. Write your examination number on the answer sheet in the space provided. Write it NOW.

Answer each multiple choice question selecting the best answer. Indicate your choice on the answer sheet by blacking through the appropriate number with the special pencil provided. Select only one answer per question; if more than one answer is indicated, the question will be marked wrong.

If you want to change an answer, you must fully erase your original answer and blacken through the one which you consider correct.

When you complete the examination, turn in the answer sheet together with this question booklet.

Unless the context otherwise requires (such as where the facts are specifically stated to arise in New York), base your answers on general common law principles as generally applied in American common law jurisdictions. Do not assume the existence of any facts or agreements not set forth in the questions.

Except as otherwise specified, all conveyances are to be considered as if made, in each case, by a deed having the effect of a bargain and sale, after the Statute of Uses, but ignoring the effects of "modernizing" statutes and rules (e.g. which eliminate the Rule in Shelley's case, the Doctrine of Worthier Title or the destructability of contingent remainders). Assume that the applicable period of limitations on ejectment is 10 years.

1. Lester Lastwell, having just been told by his doctor that his time was about out, called his niece, Clara, to his bedside, and said: "Here is the crest ring which has been in the family for 200 years. I want you to have it." Lastwell hands her the ring and she takes it.

    1. Lastwell has presumptively made a legal gift causa mortis.

    2. Lastwell has presumptively made a legal gift inter vivos.

    3. Lastwell has presumptively made a testamentary gift.

    4. More facts would be needed to select among the above answers.

2. Suppose, in the preceding question, that Lastwell unexpectedly recovered from his illness and lived five more years. After recovering, he told Clara that she could keep the ring, as it was hers:

    1. Lester would still be entitled to get the ring back for the asking, if the deathbed gift had been causa mortis.

    2. Lester would not be able to get the ring back, since telling Clara that the ring was hers either evidenced an inter vivos gift in the first place or, at least, itself effectuated an inter vivos gift.

    3. Lester could not get the ring back because, once delivery occurs, a gift causa mortis becomes the unconditional property of the donee.

    4. Lester could not thereafter take back possession of the ring as bailee without automatically revoking the gift, whether inter vivos or causa mortis.

3. If Lastwell died shortly after making a gift causa mortis of the crest ring to Clara, and his will left "my heirloom crest ring to Marilyn":

    1. The ring should be Clara's if the will was made before the gift causa mortis.

    2. The ring should be Marilyn's if the will was made after the gift causa mortis.

    3. Both of the above.

    4. None of the above.

4. The major difference between inter vivos gifts and gifts causa mortis is:

    1. Inter vivos gifts require delivery.

    2. Gifts causa mortis transfer only equitable title until the donor's death.

    3. Gifts causa mortis do not take effect to pass title until the donor's death.

    4. Gifts causa mortis are revocable.

5. Barwick handed Martorp a certificate for all 500 shares of stock in the small corporation which Barwick founded and runs, saying: "I want you to hold these for my daughter, Sally, and turn them over to her at my death." The certificate was properly endorsed to Sally. Barwick continued to control the corporation by "voting" the shares as owner, and the records showed that he took dividends on them until his death 4 years later. On these facts:

    1. It appears that Barwick created a trust with Martorp as trustee and Sally as sole beneficiary.

    2. It appears that Barwick transferred future interest, analogous to a remainder or executory interest, to Sally.

    3. Barwick could have achieved exactly the same legal result without involving a third party like Martorp.

    4. Sally got an immediate equitable title to the shares when Barwick handed them over to Martorp.

6. Suppose, in the preceding question, that Barwick merely signed a paper attached to the stock certificate and declaring that he holds the shares for Sally, and that it turns out that the dividends had been faithfully put aside in an account opened in her name:

    1. Sally probably could still not get the shares since the lack of delivery probably defeated the attempted gift.

    2. Sally probably still could not get the shares since the lack of in praesenti donative intent probably defeated the attempted gift.

    3. Both of the above.

    4. None of the above.

7. Phillip dePage, a prolific author, wanted his girl friend Maja to read a copy of his latest book, and so he handed a copy to Maja saying: "Start reading it and, if you enjoy it, the book is yours; otherwise return it". Two days later, when Maja told Phillip that she had not looked at the book, dePage in a rage demanded it back. On these facts:

    1. dePage appears entitled to the book.

    2. Maja is entitled to the book since there was in praesenti donative intent and delivery.

    3. This is actually a unilateral contract case and there was a revocation before acceptance by part performance.

    4. dePage made the gift subject to a condition subsequent, and he cannot revoke the gift until Maja has had a reasonable opportunity to read it.

8. Suppose, in the preceding question, Maja started the book, liked it, and Phillip said: "It's yours". To complete the gift and transfer legal title, Maja need not return the book to dePage so he can "deliver" it to her because:

    1. The gift was completed when dePage handed the book to Maja the first time.

    2. Delivery is an operative fact, not an evidentiary fact.

    3. What is needed here is an expression of acceptance to turn the bailment into a gift.

    4. None of the above: Maja does have to return the book to Phillip for redelivery.

9. Suppose, in the preceding question, dePage succeeds in making a valid legal gift to Maja. If it turns out that the copy which he handed Maja was only lent to him by his publisher, and not his to give away, then as against the publisher:

    1. Maja should still have a better claim to the book since it had dePage's name on it.

    2. Maja should still have a better claim to the book if she accepted it in good faith and without notice of dePage's lack of title.

    3. Both of the above.

    4. None of the above.

10. Winfield, who owned Whiteacre in fee simple absolute, conveyed "to Garland for life and one day after Garland's death to Petrusius and his heirs." As a result:

    1. Winfield has no interest in Whiteacre.

    2. Petrusius has a remainder.

    3. Garland has a life estate.

    4. All of the above.

11. Suppose Winfield conveyed Whiteacre "to Garland for life, then to Petrusius and his heirs if Petrusius reaches age 30." Petrusius was 16 at the time.

    1. Winfield would have no interest in Whitacre.

    2. Petrusius would have a contingent remainder.

    3. Petrusius would become entitled to possession of Whiteacre if he reached age 30 six years after Garland's death.

    4. All of the above.

12. Suppose, in the preceding question, Winfield died intestate shortly after the conveyance and Petrusius subsequently died intestate leaving only Garland still alive.

    1. If Petrusius died at age 27 then Winfield's heirs would be entitled to Whiteacre on Garland's death.

    2. If Petrusius died at age 37 then Petrusius' heirs would be entitled to Whiteacre on Garland's death.

    3. Both of the above.

    4. None of the above.

13. Gundry, who owned Greenacre in fee simple absolute, conveyed "to the Aerobic Spirit Church so long as the land is used for church purposes." As a result:

    1. Gundry has no further interest in Greenacre.

    2. The Aerobic Spirit Church has a fee simple on condition subsequent.

    3. If the grantee leased Greenacre to Top-Flite Oil Co., which placed a gas station on Greenacre, the immediate right to possess Greenacre would automatically pass under a possibility of reverter.

    4. All of the above.

14. Suppose, in the preceding question, the conveyance had the following additional language appended at its end: "but if the land is used for non-church purposes, then to Tamale and his heirs."

    1. Tamale would have a shifting interest.

    2. Tamale's interest would have been invalid if Gundry had conveyed by feoffment, before or after the Statute of Uses.

    3. The Aerobic Spirit Church would have a fee simple subject to an executory limitation.

    4. All of the above.

15. Which of the following is not the interest retained by the grantor when the indicated estate is created by the owner of a fee simple absolute?

    1. Fee simple on special limitation -- right of re-entry.

    2. Life estate -- reversion

    3. Fee simple on condition subsequent -- right of re-entry.

    4. Fee simple determinable -- possibility of reverter.

16. Abner conveyed Headacre "to Conklin for life, and the remainder to Conklin's heirs." Abner had owned Headacre in fee simple absolute.

    1. In a jurisdiction where the Rule in Shelley's Case applies, the conveyance would not result in any interest by purchase in Conklin's heirs.

    2. In a jurisdiction where the Rule in Shelley's Case applies, Conklin could immediately convey a fee simple absolute in Headacre to a third party.

    3. In a jurisdiction where the Rule in Shelley's case does not apply, an adverse possessor who enters after the conveyance may have to possess far more than the usual time in order to acquire a fully ripened title as against the whole world.

    4. All of the above.

17. If, in the preceding question, Abner had instead leased Headacre "to Conklin for 1,000 years so long as he lives, then to Conklin's heirs":

    1. Conklin's heirs would immediately get the seisin.

    2. Seisin would pass initially to Conklin.

    3. If an adverse possessor wrongfully removed Conklin from possession, Abner as landlord (but not Conklin) would have standing to maintain an ejectment action.

    4. None of the above.

18. Suppose, in the preceding question, that I.M. Badd, an adverse possessor, wrongfully ousted Conklin from possession. If six months later, Eve N. Wurse, another adverse possessor, ousted Badd:

    1. Badd would have an ejectment action against Wurse.

    2. Wurse could eventually acquire a ripened title as against Badd, but not as against Conklin.

    3. Wurse could not be held liable to Badd for mesne profits because Badd had no title to the land.

    4. In many jurisdictions, Wurse could not be held liable to Badd in trespass even if Badd recovered possession from Wurse.

19. Suppose, in the preceding question, Conklin recovers possession of Headacre and, thereafter, a timberman named Willy Cuttem mistakenly chops down 70 huge walnut trees on the land and sells the trunks to a hardwood dealer. If the court determines that Conklin's interest in Headacre is equivalent in value to a life estate (though technically different from a life estate) and that Conklin's heirs have a contingent remainder, then:

    1. It is almost the universal rule that Conklin could himself recover the entire loss due to the cutting of the 70 trees.

    2. There is a divergence of views as to whether Conklin could himself recover the entire loss due to the cutting of the 70 trees.

    3. Under almost no authority could Conklin, himself, recover the entire loss due to the cutting of the 70 trees.

    4. As a tenant who cannot commit waste, Conklin's sole interest in the trees is for estovers and, since he could not himself remove the trees, he should recover only for lost estovers from Cuttem.

20. Suppose in the preceding question that Conklin had died and his sole heir, Junior, had taken possession of Headacre prior to Cuttem's trespass. In most jurisdictions, if Cuttem increased the tree's value by 200% by sawing them into lumber (not, you should assume, a change in "kind"):

    1. Cuttem would be held liable for the value of the trees as lumber.

    2. A buyer in good faith from Cuttem would be liable at most only for the value of the trees as standing timber, if both the buyer and Cuttem acted in ignorance of Junior's superior title.

    3. Cuttem could be liable, for breach of the implied warranty title, to anyone who purchased the lumber from him, even if both the buyer and Cuttem acted in ignorance of Junior's superior title.

    4. Both 2 and 3 above.

21. Arno was employed as the gardner on Posh's country estate. Posh asked Arno if the lawnmower was working all right and, when Arno expressed some reservations, Posh told him to take the mower in to Sam's Repairs, in the village, so that Sam could check it. While Arno was transporting the mower from Posh's premises to the village, as instructed:

    1. Posh would have constructive possession of the mower.

    2. Posh would have actual possession of the mower.

    3. Arno would be considered bailee of the mower.

    4. Arno would be considered a constructive bailee of the mower.

22. Suppose that, while Posh's mower was at Sam's, the shop boy there thought the mower was part of the used-mower inventory and mistakenly sold the mower at a fair price to Cranz, who purchased it in complete good faith as "buyer in the ordinary course".

    1. Under the common law rule, Cranz would acquire good title as against Posh.

    2. Under the Uniform Commercial Code, Cranz would acquire good title as against Posh.

    3. Both of the above.

    4. None of the above.

23. In the preceding question, Sam would be liable to Posh:

    1. Only if the mistaken sale of the mower to Cranz occurred as a result of negligence for which Sam was legally responsible.

    2. Only if, under the law of the local jurisdiction, Cranz got a good title to the mower so that Posh could not get the mower itself back.

    3. For the amount actually paid by Cranz to Sam for the mower, or for its fair market value, whichever is greater.

    4. All of the above.

24. Suppose that, while Posh's mower was at Sam's, the shopboy there put a new coat of paint on the mower using paint that belonged to Tresselborg, and that the paint had been left by the latter for the repainting of Tresselborg's tractor.

    1. Tresselborg could recover the paint so used in a replevin action.

    2. Tresselborg could recover the value of the paint so used from Sam even if it were established (don't ask me how) that neither Sam nor his employee was negligent in mistakenly applying the paint to Posh's mower.

    3. Under the doctrine of accession, Tresselborg could recover the value of the painted mower from Sam, but nothing from Posh.

    4. Title to the paint used would remain in Tresselborg, since no one can be deprived of his property by the mere wrongful act of another.

25. Torgeson decided to build a garage towards the back of his rather constricted lot. The location of the garage required that the driveway to the street be placed right up against the boundary line with the neighboring lot, owned by Selter. In fact, because of the way the driveway curved around Torgeson's house, the back portion of Torgeson's car protruded over Selter's lot, by about 3-4 inches, every time Torgeson pulled into or out of his garage.

    1. Torgeson probably has an easement by implication to intrude on Selter's lot, as described, in using the driveway.

    2. If the garage and the driveway have been fitted into the constricted space in the only convenient way possible, and having a garage is reasonably necessary for Torgeson, then Torgeson would have a good case for asserting an easement by necessity to intrude on Selter's lot.

    3. Torgeson does not need any easement for the intrusions described so long as his tires (or other part of his car) do not actually touch the ground or any attached structures on Selter's lot.

    4. None of the above.

26. Assume in the preceding question that Torgeson has no easement over Selter's lot, but that Torgeson regularly trespasses on Selter's lot daily, every time he drives out of or into his garage.

    After several weeks of such conduct, openly but without objection from Selter:

    1. Torgeson would probably have a license implied from conduct (acquiescence), and could cease worrying that his garage/driveway investment may be impaired by Selter.

    2. Torgeson would probably have a license implied from conduct (acquiescence), subject to revocation if Selter later objects to the intrusions.

    3. Selter would be estopped from planting bushes or putting up a structure that might interfere with Torgeson's intrusions over Selter's lot.

    4. Selter would acquire reciprocal rights to make similar intrusions over Torgeson's lot.

27. Assume, in the preceding question, that Torgeson continued the described intrusions on Selter's lot over a period of 12 years.

    1. Under the majority rule, Torgeson would not have acquired an easement by prescription if Selter had voiced objection to the intrusions, in letters to Torgeson, during the 4th, 7th and 8th years of the intrusions.

    2. Following the theory of the "lost grant" fiction, Torgeson would not have acquired an easement by prescription if Selter had voiced objection to the intrusions, in letters to Torgeson, during the 4th, 7th and 8th years of the intrusions.

    3. If Torgeson thereby acquired an easement by prescription, the easement would terminate if Selter later erected a structure which would interfere with the intrusions.

    4. If Torgeson thereby acquired an easement by prescription, the easement would be terminated if Torgeson sold his land to another.

28. Suppose that Torgeson's and Selter's lots had both been owned at one time by Fallow, who lived in the house now owned and occupied by Selter. Suppose further, that Fallow put in an underground electrical conduit (to the main utility line) across what is now Torgeson's land, and Fallow then severed his land by selling what is now Torgeson's lot to Torgeson. If the deed to Torgeson mentioned no easements:

    1. Torgeson may nevertheless have acquired an easement by implied grant to use the conduit.

    2. Fallow would nevertheless have probably acquired an easement by implied reservation to use the conduit, if the use of it were strictly necessary to the use of Fallow's retained lot.

    3. Selter may have difficulty in asserting that an easement was created by implied reservation, apart from the degree-of-necessity issue, because the prior use of servient tenement was not apparent.

    4. Selter could under no circumstances assert an easement across Torgeson's land because Selter's deed did not sever his land from Torgeson's.

29. If, in the preceding question, Fallow realized his error in not reserving an easement in the deed to Torgeson, and shortly thereafter Torgeson delivered a deed to Fallow granting "an easement for the existing electrical conduit for the purpose of carrying electrical energy for domestic use between [Fallow's lot] and the main utility line," the easement thus created:

    1. Would presumptively be in gross.

    2. Would presumptively now belong to Selter, as grantee of Fallow's lot, even if the deed from Fallow to Selter did not mention it.

    3. Could be relocated by Torgeson, at his discretion, so that the conduit would cross his lot in a different place.

    4. All of the above.

30. Assume that necessary steps were taken to assure that Selter is entitled to the conduit easement. Which of the following would <u>not</u> be permissible uses of the easement?

    1. Connection of the conduit to a small "guest-house" which Selter builds on his land for his aging in-laws to live in.

    2. Connection of the conduit to a small "guest-house" which Selter builds on the next-door lot (on the other side from Torgeson) which Selter bought from Dorp after buying from Fallow. The "guest-house" is for Selter's aging in-laws to live in.

    3. Connection of the conduit to a small "guest-house" which Selter builds on a part of his land, which part he then sells to his aging in-laws so that they can live there.

    4. All of the above would be permissible.

31. Nestor needed an apartment for 15 months and answered an ad put in the newspaper by Lunden. After seeing the place and hearing the rent, $400 per month, Nestor said "I'll take it." Lunden had mentioned a written lease but, when he heard how long Nestor wanted to stay, he said that Nestor could just go in on the first of the month "without a lease." If the local Statute of Frauds states that "a lease for a term exceeding one year is void unless in writing signed by the party to be charged", but Nestor nevertheless took possession on the first of the month:

    1. Nestor is in the position of a squatter or tenant at sufferance, with no right to possession.

    2. Nestor is initially a tenant at will, with a right of possession good against everyone, including Lunden.

    3. Nestor's tenancy would be (ignoring statutory modifications of the tenancy at will) terminable at the option of either Nestor or Lunden, without any particular advance notice on the part of either.

    4. Both 2 and 3 above.

32. In the preceding question, after Nestor occupied the premises and paid rent for a few months, the earliest date (from today) as of which either party could terminate in most jurisdictions would be:

    1. Immediately.

    2. December 31, 1983.

    3. One month from today.

    4. January 31, 1984.

33. Assume, in the preceding question, that Nestor and Lunden finally did sign a lease conveying to Nestor for a term ending December 31, 1984. If Nestor is still in possession on January 4, 1985:

    1. Under the common law rule, Lunden would be entitled to hold Nestor for a new term.

    2. Under the common law rule, Lunden would be entitled to maintain an action in ejectment against Nestor.

    3. In New York, Lunden would be entitled, at his option, to treat Nestor as a trespasser or to accept rent for the holdover period (if tendered), making Nestor a tenant from month to month.

    4. All of the above.

34. If, in the preceding question, it turns out that Lunden was a joint tenant of the premises with Lester, who did not know about or participate in the lease:

    1. The lease is void, and Nestor is subject to eviction by Lester.

    2. The lease is valid and Nestor is a tenant in common with Lester.

    3. The lease is valid and Nestor is a joint tenant with Lester.

    4. The lease is valid and Nestor now must pay the agreed amount of rental to both Lunden and Lestor.

35. Assume that Lunden was sole owner of the premises and entered into a written 5 year lease with Nestor, reserving a rent of $600 per month. If, after one year, Nestor is transferred by his employer to another city,

    1. Nestor would, at common law, have a right to terminate his lease by offering to let Lunden keep the security deposit.

    2. Nester could be held liable for, at most, the amount by which the agreed rent exceeds the premises' fair rental value.

    3. Nestor could surrender the premises to Lunden, and Lunden could not unreasonably withhold consent to such a surrender.

    4. Nestor could, under the traditional rule, be held liable for the full rent, as it accrues, even if he vacated the premises and Lunden could easily relet then.

36. If, in the preceding question, Nestor's friend Carstel were willing to take over the apartment for the rest of Nestor's lease:

    1. Carstel could take over the apartment only with the landlord's consent, unless the lease had a sublet clause to permit a sublease.

    2. Nestor could assign the lease, but he could not sublet the apartment unless the lease had a sublet clause.

    3. If the lease had a prohibition on sublease, Nestor could still assign the lease to Carstel.

    4. Nestor could eliminate his liability for further rent by assigning the lease to Carstel.

37. If, in the preceding question, Nestor signed a paper entitled "Sublease" which said "I hereby sublease my apartment to Carstel for the entire remaining term of my current lease," and Carstel took possession, the result would be:

    1. An assignment.

    2. A sublease.

    3. An irrevocable license.

    4. A tenancy at will.

38. In the preceding question,

    1. Nestor would have remained in privity of estate with Lunden had he sublet to Carstel for one day less than the remaining term of his current lease.

    2. Nestor would have remained in privity of estate with Lunden if, in turning the apartment over to Carstel, Nester had retained a reversion.

    3. Nestor would presumptively remain liable for rent to Lunden based on privity of contract.

    4. All of the above.

39. Suppose Nestor remained in possession under the written 5-year lease with Lunden, and duly paid the $600 per month. If, this winter, Lunden has had boiler problems, and Nestor is forced to move to a motel for 2 weeks due to lack of heat in his apartment:

    1. Once he gets back in his apartment Nestor could sue for constructive eviction.

    2. Under the traditional common law rules, Nestor's rent would be automatically reduced for the time that he could not occupy the apartment.

    3. In many states, today, Nestor might well be relieved of his rent liability, at least in part, by the implied warranty of habitability.

    4. All of the above.

40. Common law courts which have, in the past, refused rent abatements or reductions for tenants in possession whose apartments become unfit for reasonable habitation:

    1. Would have surely held otherwise had they been willing to treat leases like ordinary contracts.

    2. Treated leases as conveyance transactions and were, therefore, in a distinct minority.

    3. Would have generally relieved the tenant of the obligation to pay rent if the premises' unfitness were caused by the landlord's breach of duty and the tenant actually abandoned possession because of the unfitness.

    4. Both 2 and 3 above.

41. Arthur conveyed Blackacre "to Ethel, Reggie and Mark, as joint tenants." At common law, and in New York, if Reggie thereafter died, leaving no will and Gladglopp as sole heir:

    1. Ethel, Mark and Gladglopp would each own separate thirds of Blackacre.

    2. Ethel, Mark and Gladglopp would each own undivided thirds of Blackacre as tenants in common.

    3. Ethel and Mark would each own undivided halves of Blackacre as joint tenants.

    4. Ethel and Mark would each own undivided halves of Blackacre as tenants in common.

42. If, in the preceding question, Reggie had conveyed "all my right, title and interest in Blackacre to Gladglopp," shortly before his death:

    1. Ethel, Mark and Gladglopp would each own separate thirds of Blackacre.

    2. Ethel, Mark and Gladglopp would each own undivided thirds of Blackacre as tenants in common.

    3. Ethel and Mark would each own undivided thirds of Blackacre as joint tenants, and Gladglopp would own an undivided one-third as tenant in common with them.

    4. Ethel, Mark and Gladglopp would each own undivided thirds of Blackacre as tenants in common.

43. If, in the preceding question, Mark had been simply left by the others as the sole occupant of Blackacre, a single-family house and lot, from the time of Arthur's conveyance until now:

    1. He would owe substantial back rent to his other co-tenants under the majority rule.

    2. He would owe substantial mesne profits to his co-tenants in states where the Statue of Anne has been received or re-enacted.

    3. He would acquire sole title by adverse possession if his co-tenants allowed him to remain in sole possession for more than ten years.

    4. Any of his co-tenants may join him in possession, and Mark would become liable for mesne profits to any of his co-tenants whose entry he prevented.

44. Arthur conveyed Greenacre "to Michael and Mira Wallump and their heirs." The grantees were husband and wife at the time, and they are still. At common law, and in New York, if Michael were to die today:

    1. Mira would automatically be sole owner upon Michael's death, even if Michael left no will.

    2. Mira would automatically be sole owner upon Michael's death, even if Michael left a will leaving "all my real estate to Sheila."

    3. Mira would automatically be sole owner upon Michael's death, even if Michael had attempted a conveyance of his interest in Greenacre to Sheila.

    4. All of the above.

45. If, in the preceding question, Michael and Mira's deed had stipulated that they were to be tenants by the entirety, then:

    1. They would be joint tenants, unless the deed also specified "with indestructable rights of survivorship.".

    2. Michael could not, by himself, convey any of his interest to Sheila if the land were in any state which recognizes tenancies by the entirety.

    3. Michael could, by himself, convey his interest to Sheila if the land were in New York.

    4. Both 2 and 3 above.

until he "accepts" Calvin as a buyer.

4. Luther could not owe a brokerage commission to Zwingli until he accepts a formal offer from Calvin.

49. Suppose in the preceding question that Calvin wrote a signed letter to Luther offering to buy Luther's house and lot for $130,000, and Luther telephoned back accepting the offer. At this point, under the Statute of Frauds:

    1. Zwingli would still not be entitled to a commission under the majority rule.

    2. Calvin would be contractually obligated to buy, and Luther would be obligated to sell.

    3. Calvin would be contractually obligated to buy, but Luther would not be obligated to sell.

    4. Calvin would have, in effect, a legal option to buy.

50. Suppose Calvin and Luther commenced to negotiate a formal contract, "superseding all previous agreements." Luther's lawyer notices that Luther's property was made "subject to an easement across the eastern 10 feet for a driveway to the neighboring lot." No driveway exists or has ever existed there, and the 10-foot strip has simply been lawn since the easement was created 15 years ago. The neighbor has no garage, but would need the 10-foot strip if he ever built one.

    1. In all probability, the easement has been extinguished by prescription.

    2. In all probability, the easement has been extinguished by abandonment.

    3. If Luther's lawyer decides that the easement exists, he should mention it in the contract.

    4. Under these facts, Luther's lawyer had best not mention the easement to anybody.

51. If the contract in the preceding question, as signed, states that the title is "subject to" the driveway easement:

    1. Luther is relieved of his duty to deliver a marketable title.

    2. Luther's title would be considered marketable for purposes of the contract, despite the driveway easement.

    3. If the driveway easement turns out to have been extinguished, Calvin could probably not enforce the contract against Luther.

    4. Calvin should be able to get title insurance protecting him against the driveway easement.

52. Suppose, after Luther and Calvin signed a contract for Luther's house and lot, a survey was done. It was revealed that, for the past 16 years, a fence put up by Luther's neighbor had stood 3 feet on Luther's side of the boundary line, as described in Luther's deed and the contract of sale. The neighbor had continuously occupied and maintained the lawn area up to the fence, using it in the normal way for the neighborhood, all in the good faith belief that the fence was properly placed. The neighbor is not a landgrabber and has offered to move the fence.

    1. The facts stated probably could not present a valid basis for Calvin to refuse to close in any jurisdiction.

    2. Once the fence is removed, and the neighbor acknowledges Luther's title to the strip, Luther's title is as good as it ever was.

    3. In some jurisdictions, the fact that Luther's neighbor occupied Luther's 3 foot strip by mistake would prevent title to the strip from ripening in the neighbor.

    4. In some jurisdictions, return of possession by the neighbor to Luther would undo any effects of the 16 years of adverse possession.

53. Suppose in the preceding question that Luther's present neighbor has only lived next door for 8 years, and before that the neighboring land was in the possession of Darth. If the possession of the strip by the present neighbor, and by Darth, was of the sort that could, if long enough, ripen into title, then the present neighbor would probably own the strip if:

    1. He took as the sole heir of Darth, who died intestate.

    2. He took under Darth's will which left him all of Darth's real property.

    3. Both of the above.

    4. None of the above.

56. N. X. Tream acquired some rural wooded acreage with a brook running through it and a small pond near the center. Tream turned a tidy profit charging hunters who came in to set up decoys and shoot wild ducks during the season. A neighbor, B.H. Ipmonk, created a decoy set up of his own which lured ducks which otherwise would have landed on Tream's property -- and also lured Tream's customers.

    1. Ipmonk's conduct on his own land could not be actionable, since Tream could not own the ducks until captured or killed.

    2. Tream had no property right to the ducks while still at liberty on or over his land, but he had a better title to them than Ipmonk.

    3. Ipmonk's conduct is not actionable by Tream because social policy favors competition.

    4. Ipmonk's conduct should be actionable by Tream on a theory of first in time, first in right.

57. Otis Bowles, one of the paying hunters whom Tream allowed to enter his land to hunt, captured a duck alive when it was stunned by another duck falling after being shot by somebody else. Otis took the captured duck home and put it in a cage. Later, the duck escaped and was shot by Tream on Tream's land. Otis sues Tream in replevin.

    1. Tream should win because the duck was originally captured on his land by a mere licensee.

    2. Bowles should win because the duck escaped from his possession, and he was the first captor.

    3. Tream should win because Bowles was negligent in letting the duck escape.

    4. Bowles should win if the duck had a permanent band on its leg identifying it as Bowles'.

58. Wilton Flowers was engaged to Faye Tacomply. Shortly before the wedding date, Wilton gave Faye a diamond bracelet which belonged to his grandmother, saying: "Grandma said she wanted me to have this for my wife." Faye was very excited. Later though, on the day of the wedding, Faye got a note from Wilton saying, "Sorry, I just can't go through with it. I love you, but I must marry Ms. Wright who just came into my life and POW! Please return the braclet so that I can give it to Ms. Wright, as per Grandma's instructions. Forever, Wilton."

    1. In New York, Wilton could probably get the bracelet back.

    2. At common law, the gift of the bracelet under these circumstances would never be returnable.

    3. Any condition subsequent on a gift is logically inconsistent with donative intent.

    4. The so-called "Heart-Balm" statutes were enacted to legalize gifts in contemplation of marriage.

59. Suppose, in the preceding question, that Faye gave the bracelet back to Wilton, and Wilton put it in his overcoat pocket. Later, Wilton checked his coat at L'Odeur de Grenouille, a posh restaurant. When Wilton reclaimed his coat, the bracelet was missing. If the restaurant operated the check room, but did not know of the braclet:

    1. It probably cannot be held liable for the loss, because it could not be bailee of the bracelet without knowledge of it.

    2. It probably cannot be held liable for the loss if the overcoat were not missing because, not knowing of the bracelet, it would not be required to take any particular steps to protect it.

    3. It is fairly clearly liable for the bracelet.

    4. It is an involuntary bailee of the bracelet and is, therefore, only liable if the loss was due to its negligence.

60. Suppose, in the preceding question, that the loss of the bracelet occurred as follows: The bracelet fell out of Wilton's pocket, unnoticed by the coatcheck attendant. Carrolton Quick eyed it on the floor and, while the attendant was hanging another coat, reached over and snagged it from behind the counter with his umbrella. The attendant caught him in the final stages of pocketing the bracelet.

    1. The restaurant has a trover action against Quick for conversion of the bracelet.

    2. Quick can transfer good title to the bracelet to a merchant who, in the ordinary course, deals in goods of that kind.

    3. In so-called American rule jurisdictions, Quick would, as finder, have a better title to the bracelet than anybody other than the true owner.

    4. In so-called English rule jurisdictions, the restaurant would have no claim to the bracelet because it never had the bracelet in its conscious possession.